

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

In Re:)	CHAPTER 13
)	
LeRoy N. Butler)	CASE NO. 17-60436
)	
Debtor.)	JUDGE RUSS KENDIG

MODIFICATION OF CHAPTER 13 PLAN POST-CONFIRMATION

Now comes Debtor, LeRoy N. Butler, by and through the undersigned counsel, and respectfully moves the Court for an Order modifying his Chapter 13 Plan and in support thereof states as follows:

1. Debtor filed his bankruptcy petition and corresponding Chapter 13 plan on March 7, 2017.
2. The Court confirmed Debtor's Chapter 13 plan on February 8, 2018.

A. Surrender of Malibu

3. On or about May 26, 2016, Debtor entered into a retail installment contract as a co-debtor for the purchase of a 2014 Chevrolet Malibu with his grandson.
4. His grandson, Takur Jackson, drove the vehicle and agreed to make the vehicle loan payments.
5. Takur fell behind on the vehicle loan payments.
6. On December 29, 2017, Debtor amended his Chapter 13 plan so that the vehicle loan would be made by the Chapter 13 Trustee.
7. Takur agreed to pay \$505.00 towards the bankruptcy to cover the increased plan payment for the vehicle loan and arrearage.
8. Takur has failed to make the \$505.00 monthly payment to the Trustee.
9. Debtor desires to modify his Chapter 13 plan to surrender the 2014 Chevrolet Malibu.

B. Valuation of 2007 Chevrolet Silverado 1500

10. On or about June 23, 2007, Debtor purchased the truck and financed \$33,716.37 through Capital One Auto Finance (hereinafter “Capital One”)
11. Capital One has a lien on the truck.
12. On his petition, Debtor estimated the value of the truck to be \$16,525.00.
13. Debtor is not an expert in valuing vehicles.
14. On March 20, 2018, Capital One filed a proof of claim in the amount of \$20,653.88 and asserted that the value of the truck was \$20,795.00 (Claim 3).
15. Prior to filing the proof of claim, Capital One obtained an appraisal on the truck.
16. The appraiser verbally advised Debtor that in their opinion, the truck was only worth approximately \$6,000.00.
17. Capital One knew or should have known that the truck was not worth \$20,795.00.
18. On March 9, 2018, Debtor obtained an appraisal wherein the truck was appraised at \$4,400.00. See attached appraisal.
19. Debtor states that he and Capital One grossly over-valued the truck.
20. Debtor requests that his plan be modified valuing the truck at \$4,400.00 and directing the Trustee to pay only \$4,400.00 to Capital One as a secured debt, with the remainder of Capital One’s claim being paid as an unsecured debt.
21. The Trustee has already paid \$3,900.00 of the \$4,400.00 secured Capital One claim, leaving a secured balance of \$500.00 to be paid.

C. Reduction in Disposable Income

22. Debtor's income has been reduced and he has had some unexpected medical and vehicle expenses in the last few months. Amended I & J are being filed contemporaneously herewith.

23. In addition, as stated above, Debtor's grandson has not made the payments as promised.

24. Debtor respectfully requests that his plan payment be adjusted as follows:

- a. For the months of January 2018 through and including April 2018, the plan payment shall be reduced to \$645;
- b. Beginning May 2018, the plan payment shall be \$1331.00 per month;
- c. Allowed unsecured claims will be paid pro rate from the funds remaining after disbursements have been made to all other creditors provided for in Debtor's plan.

WHEREFORE, Debtor respectfully requests that his plan be modified as follows:

- A. The 2014 Chevrolet Malibu will be surrendered and the claim shall be treated as a nonpriority unsecured claim;
- B. The 2007 Chevrolet Silverado 1500 shall be valued at \$4,400.00;
- C. The Chapter 13 Trustee shall pay Capital One the total amount of \$4,400.00, of which \$3,900.00 has already been paid, and the remainder of the claim shall be treated as unsecured;
- D. The Chapter 13 plan payment shall be \$645.00 per month for the months of January 2018 through and including April 2018;

E. Beginning May 2018, the plan payment shall be \$1,331.00 per month.

Respectfully submitted,

/s/Rebecca K. Hockenberry

Rebecca K. Hockenberry (0074930)

Thompson & Hockenberry Co. LPA

371 Lexington Avenue

Mansfield, OH 44907

(567) 560-2095 telephone

(614) 737-9945 facsimile

rebecca@hockenberrylaw.com

Counsel for Debtor

NOTICE OF MODIFICATION OF CHAPTER 13 PLAN POST-CONFIRMATION

Debtor has filed papers with the court to modify his chapter 13 plan..

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have on in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to adopt the Chapter 13 plan modification, or if you want the court to consider your reviews on the motion, then on or before **May 24, 2018**, you or your attorney must: File with the court a written request for hearing or written response explaining your position at:

U.S Bankruptcy Court
Clerk's Office
Ralph Regula Federal Building and US Courthouse
401 McKinley Ave., SW
Canton, OH 44702

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also send a copy to:

Rebecca K. Hockenberry (0074930)
Thompson & Hockenberry Co. LPA
371 Lexington Avenue
Mansfield, OH 44907

Toby L. Rosen, Chapter 13 Trustee
400 W. Tuscarawas Street
Charter One Bank Building, Ste. 400
Canton, Ohio 44702

Office of the U.S. Trustee
201 Superior Avenue East, Ste. 441
Cleveland, OH 44114

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

CERTIFICATE OF SERVICE

I certify that on April 25, 2018, a true and correct copy of the MODIFICATION OF CHAPTER 13 PLAN POST-CONFIRMATION and NOTICE were served:

Via the court's Electronic Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:

- Robert Anthony Franco, on behalf of Glen Maglott, at rfranco@attorneyfranco.com
- Thomas R. Houlihan on behalf of State of Ohio Department of Taxation at Houlihan@amer-law.com, crogers@amer-collect.com; rschroeter@amer-collect.com; HouliECF@aol.com
- Cynthia A. Jeffrey, on behalf of Credit Acceptance at bknotice@reimerlaw.com
- Richland County Treasurer at swildermuth@richlandcountyoh.us
- Toby L. Rosen, Chapter 13 Trustee at trosen@chapter13canton.com, trosen@ecf.epiqsystems.com
- Richard P. Schroeter on behalf of State of Ohio Department of Taxation rschroeter@amer-collect.com, crogers@amer-collect.com; HouliECF@aol.com
- D. Anthony Sottile on behalf of Capital One Auto Finance at bankruptcy@sottileandbarile.com
- United States Trustee at [\(Registered address\)@usdoj.gov](mailto:(Registered address)@usdoj.gov)
- Stephen M. Wildermuth on behalf of the Richland County Treasurer at swildermuth@richlandcountyoh.us

And by regular U.S. mail, postage prepaid, on:

Capital One Auto Finance
A division of Capital One NA
c/o Ascension Capital Group
PO Box 165028
Irving, TX 75016

Capital One Auto Finance
A division of Capital One NA
c/o AIS Portfolio Services, LP
4515 N. Santa Fe Ave., Sept. APS
Oklahoma City, OK 73118

All creditors on the attached creditor matrix

/s/Rebecca K. Hockenberry
Rebecca K. Hockenberry (0074930)